



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/651,694	08/29/2003	Harry Gene Sockman	12781/291184	9201

7590 06/22/2006
Cynthia B. Rothschild
Kilpatrick Stockton LLP
1001 West Fourth Street
Winston-Salem, NC 27101

EXAMINER

EDWARDS, LAURA ESTELLE

ART UNIT PAPER NUMBER

1734

DATE MAILED: 06/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/651,694

Applicant(s)

SOCKMAN ET AL.

Examiner

Laura Edwards

Art Unit

1734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-84 is/are pending in the application.
- 4a) Of the above claim(s) 36-64 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 9-26, 34, 35 and 65-69 is/are rejected.
- 7) ☒ Claim(s) 5-8, 27-33 and 70-74 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1734

Election/Restrictions

Applicant's election with traverse of Group I, claims 1-35 and 65-84 in the reply filed on 4/13/06 is acknowledged. The traversal is on the ground(s) that there is no undue burden on the Examiner to search both the method and apparatus claims together. This is not found persuasive because as mentioned in the restriction requirement, the apparatus can be used for a materially different purpose other than coating food product and can be used to coat a non-food object/product with paint.

The requirement is still deemed reasonable, proper, and is therefore made FINAL.

Claim Objections

Claim 24 is objected to because of the following informality: in line 2, "an spacer" should be changed to --a spacer--. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 9-14, 16-19, and 23-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller (US 4,936,248).

Miller teaches an apparatus for coating a food product comprising a first container (70) for storing the coating; a second container (45) for holding at least a portion of the coating prior

Art Unit: 1734

to deposition of the coating on the food product; and at least one wheel (25) comprising at least two coaxial side disks, wherein the two disks are spaced apart to form an inner space or pocket, and wherein the two outer faces of each disk comprise at least a portion of the outer surface of the wheel, and wherein at least a portion of the wheel is positioned in the first container and at least a portion of the wheel is positioned proximate at least a portion of the second container such that upon rotation of the wheel, the wheel transfers coating from the first container to the second container.

With respect to claims 9-14, see the trough or hopper (45) opened at the bottom, the hopper having a ledge extending toward an inclined conveyor (50), the conveyor allowing the coating material to flow as a curtain toward a conveyed (2) food object to be coated, the right side of the hopper having a vertically inclined ledge face.

With respect to claims 16-19, the type of food intended to be used with the apparatus and the type of coating intended to be used are both process limitations and have been given no patentable weight.

With respect to claim 23, the wheel comprises two facing disks and an additional disk is defined as the bottom surface of the pockets or space formed between the two facing disks.

With respect to the use of a spacer, see plate member (29).

With respect to claim 26, the auger or first container has an open or apertured bottom.

Claims 65, 67, and 82 are rejected under 35 U.S.C. 102(b) as being anticipated by Talbert (US 1,109,087).

Art Unit: 1734

Talbert teaches an apparatus for coating a food product with a butter glaze comprising a heating unit or popcorn popper (see page 1, line 65-70) for warming a food product; and an apparatus for applying a coating to the warmed food product, wherein the apparatus comprises at least one wheel (15) for transferring the coating from a first container (10) to a second container positioned between the wheel and the lip of a plate (22) for holding at least a portion of the coating prior to deposition of the coating on the food product.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 4, 20-22, 34, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller (US 4,936,248).

Miller teaches an apparatus for coating a food product as mentioned above and even though Miller is silent concerning a means for removing coating from the second container,

Art Unit: 1734

Miller provides for an arrangement wherein the wheel (25) coacts with a shield (39b) and when the coating material reaches a certain height beyond the shield, the coating material falls out from the wheel into the second container. Therefore, one of ordinary skill in the art would expect that the means for causing the coating material to be removed from the wheel to the second container would be gravity itself.

With respect to claim 20, Miller is silent concerning the material used to make the disks. However, it would have been obvious to one of ordinary skill in the art to provide disks made from plastic since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

With respect to claims 21 and 22, even though Miller is silent concerning the dimensions of the disks, it would be within the purview of one skilled in the art to determine appropriate dimensions of the disks in accordance with dimensions of the remainder of the apparatus so as to transfer a predetermined amount of coating material to each food product being coated.

With respect to claims 34 and 35, Miller provide for either coverage of the wheel of the apparatus with a covering housing in Fig. 3 or without a covering housing such that it is within the purview of one skilled in the art to provide for visual display of the apparatus including the first container and second container via removal of the covering housing.

Claims 15, 65-69, and 75-84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller (US 4,936,248) in view of Sarukawa et al (US 5,463,938).

Miller teaches an apparatus for coating a food product comprising a first container (70) for storing the coating; a second container (45) for holding at least a portion of the coating prior to deposition of the coating on the food product; and at least one wheel (25) comprising at least two coaxial side disks, wherein the two disks are spaced apart to form an inner space or pocket, and wherein the two outer faces of each disk comprise at least a portion of the outer surface of the wheel, and wherein at least a portion of the wheel is positioned in the first container and at least a portion of the wheel is positioned proximate at least a portion of the second container such that upon rotation of the wheel, the wheel transfers coating from the first container to the second container and therefrom onto a conveyed food product via conveyor (2). Miller is silent concerning the conveyor (2) comprising a plurality of rubber rings. However, it was known in the art, at the time the invention was made, to provide in a food coating apparatus, a rubber ring type conveyor in order to enable excess coating material to pass therethrough as evidenced by Sarukawa et al (see col. 3, lines 46-52 and col. 5, lines 33-48). It would have been obvious to one of ordinary skill in the art to provide a rubber ring type conveyor as taught by Sarukawa in the Miller apparatus in order to enable excess coating material to pass therethrough.

With respect to claim 65, Miller teaches an apparatus for applying a coating to the food product, wherein the apparatus comprises at least one wheel (25) for transferring the coating from a first container (70) to a second container (45) positioned for holding at least a portion of the coating prior to deposition of the coating on the food product. Miller is silent concerning a heating unit for heating the food product. However, it was known in the food coating art, at the time the invention was made, to provide a heating unit to preheat and sterilize food prior to coating with coating material as evidenced by Sarukawa (see col. 3, lines 24-32). It would have

Art Unit: 1734

been obvious to one of ordinary skill in the art to provide a heating unit as taught by Sarukawa in communication with the inlet of the Miller apparatus in order to preheat and sterilize the food product.

With respect to claims 79-82, the type of food intended to be used with the apparatus and the type of coating intended to be used are both process limitations and have been given no patentable weight.

Claims 83 and 84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Talbert (US 1,109,087).

Talbert teaches an apparatus for coating a food product with a butter glaze as mentioned above. Talbert provide for an open or uncovered apparatus such that it is within the purview of one skilled in the art to provide for visual display of the apparatus including the first container and second container due to an uncovered apparatus.

Allowable Subject Matter

Claims 5-8, 27-33, and 70-74 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents disclose the state of the art with respect to wheel coating type apparatus: Savy (US 1,775,475) and Zeegers et al (US 2003/0079678).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura Edwards whose telephone number is (571) 272-1227. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Fiorilla can be reached on (571) 272-1187. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Laura Edwards
Primary Examiner
Art Unit 1734

Le
June 21, 2006